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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

KIMBERLY IDEN, Plaintiff and Appellant, v. MONDRIAN HOTEL - LOS ANGELES, Defendant and Respondent.	B207387 (Los Angeles County Super. Ct. No. BC369628)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jane Johnson, Judge. Reversed.

Law Offices of Hutchinson & Snider and Robert B. Hutchinson for Plaintiff and Appellant.

Sedgwick, Detert, Moran & Arnold, Thomas A. Delaney, Steven S. Streger and Alexandra M. Wilcox for Defendant and Respondent.

SUMMARY

A hotel patron sued the hotel after she was injured tripping on some luggage a bellman left in a doorway in her suite. The hotel obtained summary judgment on the grounds the obstruction was not a dangerous condition, and even if it was, the danger was open and obvious. The patron contends factual disputes render the grant of summary judgment erroneous. We agree, and reverse.

FACTUAL AND PROCEDURAL BACKGROUND

Early in September 2006, appellant Kimberly Iden (Iden), her husband, and their friends, Faye and Erick Fernandez, flew to Los Angeles to celebrate Iden's 40th birthday. The trip was a surprise gift from Iden's husband, who chartered a private jet to fly the couples to Los Angeles from San Jose, and arranged for a limousine to meet them at the airport. The two couples planned to share a suite at respondent Mondrian Hotel (hotel) for one night. The group arrived at the hotel in the early afternoon. They spent several hours eating lunch at the hotel restaurant and lounging by the pool, while their room was readied. When the room was ready, the couples headed to their suite, a bright, well-lit room with large windows, white furniture and light colored carpeting and walls. The suite has a combined living and dining (common) area, with a separate bedroom and bath.

A few minutes after the group arrived at their suite, a hotel bellman delivered at least seven pieces of luggage. All the bags were black, and the pieces ranged in size from a small computer bag, to a garment bag, rolling cases and a duffel. The bellman deposited the luggage in the common area along a wall near the entrance to the bedroom, leaving one-to-three bags protruding into the doorway connecting the common area and bedroom. Iden knew the bellman had delivered the luggage, but did not know where he put it. No one moved any luggage from the spot where the bellman left it.

When the luggage was delivered, Iden and Ms. Fernandez were conversing in the bedroom. The two women stood near the doorway leading from the bedroom into the common area. Iden had her back to the common area, facing her friend. As the conversation ended, Iden either "stepped backwards" or "began turning" toward the

doorway. As she did, her left foot hit a piece of luggage. She tripped and fell, breaking her wrist.

Iden sued the hotel for general negligence and premises liability. In pertinent part, she alleged that, while she was a patron of the hotel, its agent, the bellman, "acting within the course and scope of his employment with [the hotel], brought [her] luggage to the room and, negligently set one or more bags in a walkway area creating a dangerous condition." As a result, while walking from one room to another, Iden tripped, fell and sustained injuries.

In due course, the hotel moved for summary judgment. It argued the bellman's placement of the luggage did not constitute a dangerous condition as a matter of law and, even if it did, the dangerous condition was "open and obvious," and a condition for which the hotel could not be liable. The court agreed and granted the motion. Iden appeals.

DISCUSSION

Iden insists the trial court erred in granting summary judgment. She maintains she should be permitted to prosecute her claims because a factual dispute exists as to whether the bellman's allegedly negligent placement of the luggage constituted a dangerous condition. She also argues the court erred in concluding the placement of the luggage constituted an "open and obvious" danger, absolving the hotel of any duty to warn or remedy the situation. Both assertions have merit.[1]

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[1] Iden argues the trial court erred in sustaining the hotel's evidentiary objections to three facts she offered on the issue of whether the placement of the luggage constituted a dangerous condition. Her argument does not warrant extensive discussion. Fact No. 12 should not have been excluded. It is, as Iden asserts, fully supported by Mr. Iden's deposition testimony. The hotel improperly obtained its exclusion based on the false assertion that only *Ms.* Iden's testimony was offered as substantiation. Similarly, Fact Nos. 15 and 23 — each of which is both undisputed and immaterial for all practical purposes — are fully substantiated by the proffered evidence.

Dangerous condition

The trial court found the placement of the luggage did not constitute a dangerous condition as a matter of law. Iden contends that finding was erroneous. Iden's causes of action for general negligence and premises liability are predicated on the identical allegations that, by placing one or more pieces of luggage in a walkway area in the hotel suite, the bellman created a dangerous condition, and, as a direct result of the bellman's negligence — imputed to the hotel under the theory of respondeat superior — Iden tripped over the luggage while walking from one room to another, fell and sustained injuries.

To recover for negligence, a plaintiff must demonstrate the defendant owed the plaintiff a legal duty, breached that duty, and that the breach was a cause in fact of the plaintiff's injuries. (*Gordon v. Havasu Palms, Inc.* (2001) 93 Cal.App.4th 244, 252.) Premises liability is a form of negligence, in which an owner has a duty to exercise ordinary care in managing its property to avoid exposing persons to unreasonable risk of harm. Failure to fulfill this duty is negligence. (*Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1619.)

Like any landowner, an innkeeper's liability for injuries sustained by guests on its premises is governed by ordinary negligence principles, as set forth in Civil Code section 1714, subdivision (a). (*Rowland v. Christian* (1968) 69 Cal.2d 108, 119 (*Rowland*.) In such cases, the pivotal question is whether the proprietor acted as a reasonable person in managing its property in view of the probability of injury to others. (*Ortega v. Kmart Corp*. (2001) 26 Cal.4th 1200, 1205.)

Innkeepers are not insurers of the safety of their premises or of the equipment thereon, and are not absolutely liable for injuries sustained. (*Stowe v. Fritzie Hotels, Inc.* (1955) 44 Cal.2d 416, 420-421.) No suggestion of negligence arises merely because an accident happens. (*Edwards v. California Sports, Inc.* (1988) 206 Cal.App.3d 1284, 1287.) Sometimes an accident is just that, and no one is responsible for the unfortunate injury that occurs as a result. Liability will not attach in the absence of negligence. A landowner is negligent for failure to use reasonable care to discover any unsafe

conditions on the property and to repair, replace or give adequate warnings of anything that could reasonably be expected to harm others. (*Alcarez v. Vece* (1997) 14 Cal.4th 1149, 1156 [property owners must maintain land in reasonably safe condition]; *Lucas v. George T.R. Murai Farms, Inc*. (1993) 15 Cal.App.4th 1578, 1590 ["an owner of property is not an insurer of safety, but must use reasonable care to keep the premises in a reasonably safe condition and must give warning of latent or concealed perils"]; *Chance v. Lawry's, Inc.* (1962) 58 Cal.2d 368, 373 [proprietor's duty to warn extends to conditions he knows are dangerous, as well as conditions that an exercise of ordinary care will reveal to be dangerous].) Whether a property owner has acted as a reasonable person in the management of the property depends on several factors including the likelihood of injury and the probable seriousness of an injury. (*Sprecher v. Adamson Companies* (1981) 30 Cal.3d 358, 371-372.)

Here, by concluding the bellman's placement of luggage did not constitute a dangerous condition as a matter of law, the trial court found, in essence, the hotel acted reasonably toward Iden (that is, it did not breach its duty to exercise due care) even though the bellman failed to warn the occupants to avoid tripping on the luggage or to take precautions by placing it in a safer location. The hotel contends that, taken together, the fact that any obstruction posed by the luggage was obvious to a reasonably foreseeable user exercising due care (watching where she was going), the lighting was sufficient to make the bags visible, and Iden's admission that she did not know where the bags were when she stepped back into the common area, demonstrate the placement of the luggage did not create a dangerous condition, i.e., a substantial risk of injury, had the property been used with due care in a manner reasonably intended.

Relying on *Akins v. County of Sonoma* (1967) 67 Cal.2d 185, and *Constance B. v. State of California* (1986) 178 Cal.App.3d 200, the trial court agreed and found there was no dangerous condition, as a matter of law. Both cases stand for the indisputable principle that a condition may be considered dangerous only if it presents an unreasonable risk of harm to persons using the premises in a foreseeable manner. (See *Akins v. County of Sonoma, supra,* 67 Cal.2d at p. 196). Put slightly differently, a

"dangerous condition" is "one which a person of ordinary prudence should have foreseen would appreciably enhance the risk of harm." (*Constance B. v. State of California*, *supra*, 178 Cal.App.3d at p. 209.) Whether a particular condition is dangerous is a question of fact, unless the evidence points unerringly to a single conclusion. (*Matthews v. City of Cerritos* (1992) 2 Cal.App.4th 1380, 1382; *Edwards v. California Sports, Inc.*, *supra*, 206 Cal.App.3d at p. 1288; *Wallace v. Speier* (1943) 60 Cal.App.2d 387, 391 [question of an innkeeper's negligence in maintaining or operating its premises, resulting in injury to a guest, is ordinarily for the trier of fact].)

The hotel argues the issue of whether the placement of the luggage constituted a dangerous condition was properly resolved as matter of law because Iden's "sole evidence" of the dangerousness of the condition "was the fact that she fell," an argument improperly premised on the inapplicable doctrine of strict liability. (See *Mora v. Baker Commodities, Inc.* (1989) 210 Cal.App.3d 771, 777 [property owner's liability may not be based in strict liability].) This contention is factually and legally incorrect.

The evidence Iden presented regarding the "dangerousness" of the condition relates to the undisputed fact that the bellman placed the luggage in such a way that one or more pieces protruded into the entry between the bedroom and common area. It is not unreasonable to expect that the placement of several pieces of luggage partially blocking a portal between two rooms could constitute a tripping hazard that might go unseen by a guest, especially one like Iden, who was excited about her surprise birthday trip to a luxury hotel, and rushing from one room to another as she prepared for the evening's festivities. Perhaps Iden was negligent herself and her fall was at least partially due to her inattentive failure to watch where she was going. The degree to which each party is responsible for the accident must be resolved by the trier of fact and cannot be determined as a matter of law. A jury could find both the hotel and Iden at fault. "Whether [Iden] made a reasonable use of her faculties and acted as a reasonable person, under the circumstances, was a factual question for the jury's determination." (*Chance v. Lawry's, Inc.*, *supra*, 58 Cal.2d at p. 376.) On this record, we cannot agree the trial court was correct to find, unequivocally, that placement of the luggage in the doorway was not

such a condition "which a person of ordinary prudence should have foreseen would appreciably enhance the risk of harm." (*Constance B. v. State of California*, *supra*, 178 Cal.App.3d at p. 209.) The question of whether the bellman created a dangerous condition, thereby breaching the hotel's duty of care, is an issue of fact to be resolved by a jury.

Open and obvious danger

The hotel argues that, even if the bellman's placement of the luggage may be considered a dangerous condition, that condition was so obvious Iden should reasonably be expected to have seen it. Thus, the hotel had no duty to warn her about the dangerous condition, as a matter of law.

The primary dispute is whether the obstruction posed by the placement of the luggage was clearly perceptible to the reasonable hotel guest. Multiple items of baggage, some of which are large and protrude into a doorway between two rooms, pose an obvious hazard to someone passing through an entrance without looking down. The type of injury which may occur is also obvious: a trip, a fall and a fractured body part. People are expected to use due caution when navigating obvious hazards to avoid injuring themselves. (See *Matthews v. City of Cerritos*, *supra*, 2 Cal.App.4th at pp. 1384-1385; *Fredette v. City of Long Beach* (1986) 187 Cal.App.3d 122, 132.)

On the other hand, a hotel guest, like any business customer, "is not obliged to make a critical examination of the surroundings he is about to enter, but on the contrary has the right to assume that those in charge have exercised due care in the matter of inspection, and have taken proper precautions for the safety of the patrons, and will use reasonable care in guarding him against injury." (*Chance v. Lawry's Inc.*, *supra*, 58 Cal.2d at pp. 373-374.) A customer shopping in a store may focus her attention on the wares on display and, more or less absorbed by her planned transactions, may not watch the floor. The reasonable anticipation of such behavior increases the necessity for a proprietor to exercise care to keep its floor space and customer aisles clear, safe and fit for its customers' purposes. (*Moise v. Fairfax Markets, Inc.* (1951) 106 Cal.App.2d 798, 803.) Here, Iden testified that, immediately before she fell, she was engaged in

conversation with her friend in the bedroom. As that conversation ended, she stepped back and began to turn, intending to enter the common area to talk to her husband and Mr. Fernandez before she showered, and got ready for dinner. She was turning as she stepped back, and her attention was not fixed on the floor or the area in front of her. She was not facing forward and did not see the luggage in the doorway before she fell.

The close question of whether the placement of the luggage posed an open and obvious danger is for the jury. "Under *Rowland* . . . , we are impelled to conclude that the obvious nature of the risk, danger or defect . . . can no longer be said *per se* to abridge the invitation given by the possessor of land, or to derogate his duty of care, so as to make his liability solely a matter of law . . . . By that decision, this matter of law for the court is transmuted to a question of fact for the jury; namely, whether a possessor of land even in respect to the obvious risk has acted reasonably in respect to the probability of injury to an invitee; and whether or not the invitee used the property reasonably in full knowledge of any obvious risk entering into a subsequent injurious incident." (*Beauchamp v. Los Gatos Golf Course* (1969) 273 Cal.App.2d 20, 33.) In *Neel v. Mannings, Inc.* (1942) 19 Cal.2d 647, a plaintiff traversing the steps of a restaurant, struck her head on a board projecting from the ceiling. The board was in plain view, but plaintiff was distracted by people coming down the stairs. The court held the issue of whether the danger was sufficiently obvious was for the jury to decide. (*Id*. at p. 656.) Likewise, in *Chance v. Lawry's Inc.*, *supra*, 58 Cal.2d 368, the plaintiff was injured when she lost her balance and fell backward into a planter box located in a narrow foyer at the entrance to defendant's restaurant. The plaintiff testified that she had not seen the planter, but admitted that she could have seen the box if she had looked. (*Id*. at pp. 372-373.) A jury awarded her damages. On appeal, the restaurant argued that the "planter box was so obvious that [the defendant] could reasonably anticipate that patrons would see and apprehend the danger [of losing their balance and falling into the planter]." (*Id*. at p. 374.) The Supreme Court declined to reweigh the issue. "Whether the danger created by the open planter box was sufficiently obvious to relieve Lawry's of its duty to

warn [the plaintiff] of its existence was peculiarly a question of fact to be determined by the jury." (*Ibid.*)

The reasoning of these cases also applies here. Although the hotel believes the luggage posed an obvious risk of tripping, Iden claims otherwise. A question remains whether the risk was so obvious as to relieve the hotel of its duty to take reasonable precautions for the safety of its patrons and relocate the baggage or at least warn Iden of its existence to guard against foreseeable injury. (*Chance v. Lawry's Inc.*, *supra,* 58 Cal.2d at pp. 373-374.) Whether the luggage lying in the doorway posed a danger so obvious that Iden should have seen and avoided it is a question of fact for the jury to resolve. Accordingly, we decline to find the condition created by the bellman was sufficiently open and obvious, and the hotel had no duty to provide a hazard-free premises for its guests.

We will not discuss every case cited by the hotel to buttress its argument that the luggage posed such an obvious danger as to relieve it of liability as a matter of law. Suffice it to say that the majority of those cases either predate *Rowland*, and rely on principles of questionable viability after *Rowland* (see, e.g., *Powell v. Stivers* (1951) 108 Cal.App.2d 72, 73-74 [precluding recovery against landlord based on now disfavored doctrine that tenant assumes all risk to discover patent danger]), or provide more support for Iden's position than the hotel's (e.g., *Curland v. Los Angeles County Fair Assn.* (1953) 118 Cal.App.2d 691, 695 [question of negligence and contributory negligence are purely factual issues]; *Krongos v. Pacific Gas & Electric Co.* (1992) 7 Cal.App.4th 387, 394 [in circumstance where dangerous condition was not created by landowner, it was fact finder's job to determine if a "*particular* plaintiff's injury . . . was *not* foreseeable in light of this *particular* defendant's conduct"]). Other cases on which the hotel relies fail to address circumstances in which the danger posed was a creature of the defendant's making. For example, some involve circumstances in which the harm was not foreseeable (see *Edwards v. California Sports, Inc.*, *supra*, 206 Cal.App.3d at p. 1288 [no showing that 50-inch guard fence which intoxicated plaintiff climbed and fell off was negligently constructed or inadequate for its intended purpose]) or in which the plaintiff's

injuries occurred off the landlord's premises and were caused by conditions over which the landlord had no control. (See *Lucas v. George T.R. Murai Farms, Inc., supra,* 15 Cal.App.4th at p. 1590 [insufficient showing of control by owner of property adjacent to that on which plaintiffs were injured to impose a duty to protect on adjacent landowner]; *DeRoche v. Commodore Cruise Line, Ltd.* (1994) 31 Cal.App.4th 802, 807-808 [cruise ship owner not liable for negligent medical care passenger received in port after being injured in an accident on an excursion off the ship].)

The two cases on which the trial court relied to support its finding that the hotel lacked a duty to warn of an obvious danger are also inapposite. In *Ortega v. Kmart Corp., supra,* 26 Cal.4th 1200, a customer slipped in a puddle of milk spilled by an unknown person. The Supreme Court held only that the plaintiff was entitled to an opportunity to demonstrate that the proprietor had constructive notice of the dangerous condition, if the plaintiff could show the site was not inspected within a reasonable time so that a person exercising due care would have discovered the hazard. If the plaintiff could show an inspection was not made within a particular period of time, that could raise an inference the condition had existed long enough for the owner to have discovered it. However, it remained a question of fact for the jury to decide whether, under the circumstances, the dangerous condition existed long enough to have been discovered and rectified by a proprietor exercising reasonable care. (*Id*. at pp. 1212-1213.) *Ortega* did not take issue with the principle that a proprietor has a duty to correct a dangerous condition about which it is or should be aware. The narrow issue was simply how a plaintiff might establish the proprietor's constructive knowledge of a dangerous condition not of its own making. (*Id*. at p. 1207.)

In *Danieley v. Goldmine Ski Associates, Inc.* (1990) 218 Cal.App.3d 111, a skier was severely injured when she hit a tree after losing control of her skis and veering off a ski run. The court held the operator of the ski area had no duty to warn patrons about the tree — which posed an obvious danger not of the proprietor's making — or to remove it. To impose such a far-reaching duty would, in effect, render the operator an insurer of the safety of the plaintiff and every skier on the mountain. (*Id*. at p. 121.) The potential

danger posed by low-lying luggage carelessly left in the bedroom doorway of a hotel suite is quite unlike that of a large tree, which every skier may expect to find on a mountain. Moreover, to the extent a dangerous condition existed here, it did so only by virtue of the hotel's negligent placement of the luggage. Whether the danger posed by the luggage was so obvious Iden should have seen it is a question of fact for the jury to resolve. We decline to find the condition was sufficiently open and obvious to relieve the hotel, as a matter of law, of its duty to remedy or warn about the situation.

DISPOSITION

The summary judgment in favor of the hotel is reversed. Costs of appeal are awarded to Iden.

NOT TO BE PUBLISHED

WEISBERG, J.*

We concur:

MALLANO, P.J.

ROTHSCHILD, J.

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*Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.